RECENT CASE NOTES

ADMIRALTY—SALVAGE—RESCUE OF VESSEL FROM BOLSHEVIKI.—The plaintiffs, officers, and enlisted men of the British and Belgian forces, rescued a ship from falling into the hands of the Bolsheviki. The vessel was lying at Murmansk when that place was taken over by the Reds. The plaintiffs succeeded, with very little assistance from the crew, who were inclined to surrender the vessel, in getting up sufficient steam to get out of the harbour, after a running fight in which several were wounded. *Held,* that this was a sufficient salvage service to entitle the plaintiffs to compensation from the owners. *The Lomonosoff* (1920, Adm.) 37 T. L. R. 151.

The much lamented change from the glorious days of "wooden ships and iron men" to the days of "iron ships and wooden men" has not yet taken all the romance from the sea. There seems to be no authority directly in point, though there are analogous cases that make as interesting reading as one of Stevenson's novels. To constitute a salvage service there must be the elements of peril to the subject-matter of the service and voluntariness on the part of the salvor. Kennedy, *The Law of Civil Salvage* (1891) 18. The rescue of vessels from pirates and plunderers has been held to be a salvage service. *The Calypso* (1828, Adm.) 2 Hagg. 209; *The Lady Worsley* (1855, Adm.) 2 Spink, 253; cf. 13 & 14 Vict. c. 26, sec. 5 (1850); *Parter v. The Friendship* (1831, D. Mass.) Fed. Case No. 10,783. Salvage has been allowed to the crew of a vessel that rescued another vessel from slaves who had overpowered the crew. *The Trelawney* (1802, Adm.) 4 C. Rob. 223; see *The Armistad* (1841, U. S.) 15 Pet. 518. But the service must be rendered during the actual insurrection of the slaves. *The Anne* (1804, Adm.) 5 C. Rob. 100. It was held to be a salvage service in an interesting case of a master and boy who recovered a vessel from a prize crew which had been placed in charge of her, and in another case in which a vessel recaptured a prize from an enemy. *The Beaver* (1801, Adm.) 3 C. Rob. 293; *Bas v. Tingey* (1800, U. S.) 4 Dall. 37. Salvage has not been allowed in those cases where the loyal members of the crew recovered the vessel from their mutinous shipmates. *The Governor Raffles* (1815, Adm.) 2 Dod. 14; *The Francis and Eliza* (1816, Adm.) 2 Dod. 115, 118. The court decided the instant case upon the analogy of a vessel recovered from pirates or mutineers, inasmuch as there was at Murmansk no government recognized by England and no established government at all, and granted the plaintiffs an award for their meritorious service.

AGENCY—MASTER AND SERVANT—GROUNDS FOR DISCHARGE—SINGLE INSTANCE OF INTOXICATION.—The plaintiff was an agent in the employ of the defendant real estate company under the usual contract requiring him to give his entire time and energy to the work of his employment. One afternoon he came into the defendant's office in a state of intoxication, incoherent, but not boisterous or offensive. He was sent home and subsequently was discharged. This action was brought to recover damages for wrongful discharge. *Held,* that the question of justification was one of fact for the jury. *Herbert v. Wood, Dolson Co.* (1920, Sup. Ct.) 113 Misc. 671, 185 N. Y. 325.

To justify a servant's discharge there must have been a breach of an express or implied condition of the contract of service. That he will abstain from *habitual* drunkenness is always implied. *Bass Furnace Co. v. Glasscock* (1887) 82 Ala. 452, 2 So. 315. An occasional, or even a single, instance of intoxication may be a sufficient breach of the implied condition; for, if his conduct is likely

to be prejudicial to the interests or reputation of his master, or if it is incompatible with the due and faithful performance of his duty, his discharge is justifiable. *McEdwards v. Ogilvie* (1886) 4 Manitoba, 1. Since there clearly can be no fixed rule of law which, in every case, would determine this question, it seems properly one for the jury, with explicit instructions from the court as to what constitutes a sufficient ground for discharge. *Clouston v. Corry* [1906, H. L.] A. C. 122. But, when the servant's acts are flagrant, the court may hold as a matter of law that the discharge was justified. See *Dorrance v. Hoopes* (1914) 122 Md. 344, 352, 90 Atl. 92, 95. A choir master may be discharged for being once intoxicated, because of the effect that condonation of his offense would have upon his pupils. *Martin v. Lane* (1885) 3 Manitoba 314. The owner of a plantation may refuse to turn it over to an overseer who is drunk at the time. *Johnson v. Gorman* (1860) 30 Ga. 612. And a railroad engineer who was occasionally noticeably affected by liquor while on duty may be discharged, since it would clearly have been negligence on the part of the company towards its passengers to have retained him. *Smith v. Ry.* (1895) 60 Minn. 330, 62 N. W. 392. Moreover, it is unnecessary that the drunkenness occur while the servant is on duty, if he is by it rendered incapable of faithful and efficient performance. *Ulrich v. Hower* (1893) 156 Pa. 414, 27 Atl. 243. On the other hand, occasional intoxication may not be of much importance, as in the case of an apprentice. *Wise v. Wilson* (1845, N. P.) 1 Car. & Kir. 662. Or in the case of seamen, with whom courts of admiralty are inclined to be rather lenient. *The Atlantic* (1862, Adm.) Lush. 566; *The El Dorado* (1868, D. Mass.) Lowell 289. Under the circumstances of the principal case, where there is a reasonable doubt as to the severity of the plaintiff's offense, it seems that the court's view that the case should have been submitted to the jury is correct. Regarding grounds of dismissal generally, see (1918) 27 YALE LAW JOURNAL, 954. And as to the damages recoverable, see (1912) 21 *id.* 691.

AGENCY—MASTER AND SERVANT—LIABILITY OF MASTER FOR INJURY TO VOLUNTEER.—The defendant's servant, who was operating a motor truck, invited the plaintiff, a minor, without authority, to assist him in unloading the truck. While driving back to the defendant's shop, the plaintiff was asked to ride on the running board to facilitate the driving, and while they were rounding a curve at considerable speed, he was thrown from the truck and sustained the alleged injuries. The plaintiff was non-suited. *Held,* that there should be a new trial. *Kalmich v. White* (1920, Conn.) 111 Atl. 845.

The English rule absolves the master on the fellow-servant doctrine; while the majority of the American courts reach the same conclusion on the theory that, the relation of master and servant not existing, the volunteer assumes all risks and has a cause of action for wilful or wanton injury only. For a discussion of the English and American cases, see (1920) 30 YALE LAW JOURNAL, 85, commenting on *Heasmer v. Pickfords, Ltd.* (1920, K. B.) 36 T. L. R. 818; *Grissom v. Atlanta Ry.* (1907) 152 Ala. 110, 44 So. 661; see *Geer v. Sound Transfer Co.* (1915) 88 Wash. 1, 4, 152 Pac. 691, 693. The instant case, however, places the volunteer on the same footing as a trespasser. It is generally recognized that one owes a trespasser the duty of using ordinary care to avoid injuring him after discovering him in a perilous position. *Webb v. Kansas City So. Ry.* (1919) 137 Ark. 107, 208 S. W. 301; 29 Cyc. 443. See also (1921) 30 YALE LAW JOURNAL, 201. It is submitted that this step is justifiable in view of the fact that a volunteer is present to promote the interests of the master, while a trespasser is a tort-feasor. Hence it seems not extreme but a logical development to hold that a volunteer should enjoy at least as advantageous a position as a trespasser. See *Evarts v. St. Paul Ry.* (1894) 56 Minn. 146, 57 N. W. 459, 460.